

Montana Water Court
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MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANT: Wilson Family Ltd Partnership

CASE 43B-0751-R-2022

43B 215095-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's finding of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

This claim appeared in the Preliminary Decree with the following remarks:

FLOW RATE MAY REQUIRE MODIFICATION BASED ON RESOLUTION OF MAXIMUM ACRES ISSUE.

CLAIM WAS NOT INCLUDED IN THE BASIN 43B TEMPORARY PRELIMINARY DECREE ISSUED 01/16/1985.

CLAIM FILED LATE 06/12/1996. IN ADDITION TO BEING SUBORDINATE TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW, THIS RIGHT MAY ALSO BE SUBORDINATE TO CERTAIN PERMITS AND RESERVATIONS OF WATER. SEE SECTION 85-2-221 MCA.

THE SWEET GRASS COUNTY WATER RESOURCES SURVEY (1950) APPEARS TO INDICATE 0.00 ACRES IRRIGATED.

POINT OF DIVERSION AND DITCH NAME WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The flow rate and maximum acres irrigated issue remarks were not addressed through the objection process. The Water Court is required to resolve the issue raised by an issue remark. Section 85-2-248, MCA. Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimants an opportunity to file additional information or evidence.

The December 1, 2022 Court Minutes, Order Entering Defaults, and Order Setting Deadlines Pursuant To Section 85-2-248(5), MCA set various deadlines for the claimants and the Montana Department of Natural Resources and Conservation [“DNRC”] to file documents addressing and resolving the issue remarks. Nothing was filed by Helen M. Cosgriff and Robert P. Cosgriff.

On March 9, 2023 the DNRC Memorandum was filed stating that Robert Cosgriff contacted the DNRC and assisted with resolving the issue remarks, but also stating that the Cosgriffs no longer own the claim. Wilson Family Limited Partnership is identified as the current owner. The Memorandum explains and confirms the historical irrigation of the place of use identified on the Preliminary Decree abstract of claim and states the flow rate does not require modification. The DNRC Memorandum then states it cannot make recommendations

concerning the two issue remarks because the diversion and conveyance system is unclear.

The March 14, 2023 Order Setting Filing Deadline set a deadline for Wilson Family Limited Partnership to file an ownership update. Wilson Family Ltd Partnership filed an ownership update. The May 3, 2023 Order Updating Caption And Mailing List and Order Setting Filing Deadline includes a copy of the DNRC Memorandum and states:

As a representative for Wilson Family LTD Partnership was not included in the discussions with the DNRC and has not endorsed the Memorandum's recommendations, it is

ORDERED that the deadline for Wilson Family LTD Partnership to file a statement endorsing or rejecting the Memorandum's recommendations is **June 15, 2023**. If nothing is filed by this deadline, the Court will conclude that Wilson Family LTD Partnership agrees with the Memorandum's recommendations.

Nothing was filed by Wilson Family Ltd Partnership. These documents are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree states that the maximum acres irrigated is 35.00. The DNRC Memorandum clearly states that the maximum acres irrigated is confirmed, and consequently both the maximum acres issue remark and the flow rate issue remark are resolved. The additional comment concerning the diversion and conveyance system does not make sense. First, the remark added during ReExamination states the point of diversion and

ditch name were modified by the DNRC. Second, the marked map inserted in the DNRC Memorandum jibes with the Sweet Grass County Water Resources Survey (1950) maps for T3N, R14E (where the point of diversion is located) and T3N, R15E (where the place of use is located). The inserted map appears to confirm the place of use is irrigated by Wheeler Creek water from the Sweet Grass Canal as stated on the Statement of Claim and as appears in the Preliminary Decree.

The maximum acres irrigated and flow rate do not require change. The maximum acres irrigated and flow rate remarks should be removed as addressed and resolved.

2. The remark stating this late filed claim was not in the 1985 Temporary Preliminary Decree provides notice of this fact. The remark referencing the filing date provides notice of possible additional subordination. No objection was filed to pursue additional subordination. The remark concerning the point of diversion legal description and ditch name modifications provide notice of these changes made prior to issuance of the Preliminary Decree. No objection was filed to contest these modifications. All three remarks should be removed as having served their notice purposes.

CONCLUSION OF LAW

To the extent the DNRC Memorandum addresses the maximum acres irrigated and flow rate issue remarks, it is sufficient to resolve the issue remarks without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via USPS Mail:

Wilson Family Ltd Partnership
562 Otter Creek Rd
Big Timber MT 59011

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 215095-00 STATEMENT OF CLAIM

Version: 3 -- POST DECREE

Status: ACTIVE

Late Claim: B

Owners: WILSON FAMILY LTD PARTNERSHIP
562 OTTER CREEK RD
BIG TIMBER, MT 59011

Priority Date: JUNE 1, 1889

Enforceable Priority Date: JUNE 30, 1973

CLAIM FILED LATE 06/12/1996 . AS MANDATED BY SECTION 85-2-221(3), MCA, THIS CLAIM IS SUBORDINATE, AND THEREFORE JUNIOR, TO ALL INDIAN AND FEDERAL RESERVED WATER RIGHTS AND ALL VALID TIMELY FILED CLAIMS BASED ON STATE LAW.

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

***Flow Rate:** 1.33 CFS

***Volume:** THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.

Climatic Area: 2 - MODERATELY HIGH

Maximum Acres: 35.00

Source Name: WHEELER CREEK

Source Type: SURFACE WATER
ALSO KNOWN AS CAMP CREEK

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NENWNE	13	3N	14E	SWEET GRASS

Period of Diversion: MARCH 1 TO NOVEMBER 1

Diversion Means: HEADGATE

Ditch Name: SWEET GRASS CANAL

Period of Use: MARCH 1 TO NOVEMBER 1

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	35.00		S2NE	18	3N	15E	SWEET GRASS
Total:	35.00						